

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES WHITTENBERG,

Plaintiff, No. CIV S-04-2313 FCD JFM P

vs.

LT. L. ROLL,

Defendant. ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights complaint pursuant to 42 U.S.C. § 1983. On May 22, 2006 plaintiff filed a document entitled ‘motion for judgment.’ On June 2, 2006, defendant filed an opposition to plaintiff’s motion, which defendant construed as a motion for default judgment.

In his motion, plaintiff asks the court to enter judgment in his favor because he believes counsel for defendant has unreasonably delayed this case.<sup>1</sup> Plaintiff has not demonstrated good cause for the entry of default judgment against defendant. Plaintiff has also failed to meet the requirements of Rule 56 of the Federal Rules of Civil Procedure such that his

<sup>1</sup> Although plaintiff contends defendant requested a second extension of time to file a motion for summary judgment “simply to waste the court’s time,” this court found good cause for the request and granted defendant’s request. (May 18, 2006 Order.)

1 motion cannot be construed as a motion for summary judgment. See Rand v. Rowland, 154 F.3d  
2 952, 957 (9th Cir. 1998) (en banc), cert. denied, 527 U.S. 1035 (1999); Klingele v. Eikenberry,  
3 849 F.2d 409, 411-12 (9th Cir. 1988). Plaintiff's motion will be denied without prejudice.

4 On May 31, 2006, plaintiff renewed his request for the appointment of counsel.  
5 Plaintiff's previous requests were filed on December 22, 2004, March 17, 2005, and July 12,  
6 2005. All requests were denied. In light of those orders, the plaintiff's May 31, 2006 request  
7 will be denied.

8 Good cause appearing, IT IS HEREBY ORDERED that:

9 1. Plaintiff's May 22, 2006 motion is denied without prejudice.  
10 2. Plaintiff's May 31, 2006 motion for appointment of counsel is denied.

11 DATED: June 15, 2006.

12   
13 John F. Marshall  
14 UNITED STATES MAGISTRATE JUDGE

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